

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

DEPT. OF TRANSPORTATION
DOCKETS

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Joint Application of)
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)

UNITED AIR LINES, INC.)

and)

ASIANA AIRLINES, INC.)
)
)

under 49 U.S.C. §§ 41308 and 41309 for approval of and)
antitrust immunity for an Alliance Expansion Agreement)
)

Docket OST-03-

14202

**MOTION OF ASIANA AIRLINES, INC.
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

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Counsel for
ASIANA AIRLINES, INC.

January 3, 2003

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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Joint Application of)	
)	
UNITED AIR LINES, INC.)	
and)	Docket OST-02-
ASIANA AIRLINES, INC.)	
)	
under 49 U.S.C. §§ 41308 and 41309 for approval of and)	
antitrust immunity for an Alliance Expansion Agreement)	
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January 3, 2003

**MOTION OF ASIANA AIRLINES
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

Asiana Airlines (“Asiana”), pursuant to Rule 12 of the Department’s Rules of Practice (14 C.F.R. § 302.12), respectfully requests that the Department withhold from public disclosure the documents that Asiana is filing herewith under seal in the above-captioned proceeding. These documents contain confidential, proprietary and commercially sensitive information. Asiana is submitting these documents to facilitate the Department’s processing of the Joint Application of United Air Lines, Inc. and Asiana for approval of and antitrust immunity for an Alliance Expansion Agreement. In support of this request, Asiana submits the following:

**I. ASIANA’S CONFIDENTIAL DOCUMENTS ARE PROTECTED
FROM PUBLIC DISCLOSURE BY THE FREEDOM OF
INFORMATION ACT**

To facilitate expeditious processing of the Joint Application, Asiana is voluntarily submitting documents similar to those submitted to the Department in conjunction with other recent applications for antitrust immunity. An index of Asiana’s confidential

documents is attached. These documents, produced by Asiana in consultation with counsel, are confidential and proprietary.

Asiana's documents are protected from public disclosure under various exemptions to the Freedom of Information Act ("FOIA"), including 5 U.S.C. §§ 552(b)(3) and (b)(4). Exemption 3 protects from disclosure information specifically protected by another federal statute, including 49 U.S.C. § 40115. See British Airports Authority v. CAB, 531 F.Supp. 408, 414 (D.D.C. 1982). Section 40115 states that the Department "shall" withhold from public disclosure, among other things, information that would adversely affect an air carrier's competitive position in foreign air transportation. The materials at issue here clearly satisfy this standard. They contain extremely sensitive information, including Asiana's views on its competitive positions and its strategic intentions. These materials, which have not been made publicly available, could be used by Asiana's competitors to their strategic advantage, and Asiana's disadvantage, in making competitive decisions.¹

Exemption 4 protects from public disclosure information that is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential." Gulf & Western Indus., Inc. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1980) (citations omitted). All the documents at issue here clearly satisfy this standard.

¹ The Department has found that Exemption 3 also applies to information protected by 49 U.S.C. § 46311. See Order 2001-10-2, at 2-3. That statutory provision prohibits the release of information acquired by the Department "when inspecting the records of an air carrier" or information that "is withheld from disclosure under section 40115." 49 U.S.C. § 46311(a).

All are commercial or financial in nature; they were obtained from a private citizen; and are privileged or confidential. Asiana would suffer substantial competitive harm if the documents were publicly disclosed. See Washington Post Co. v. HHS, 690 F.2d 252, 268 (D.C. Cir. 1982) (defining the standard for whether a document is privileged or confidential). Public disclosure of such information could "'impair the Government's ability to obtain necessary information in the future or . . . cause substantial harm to the competitive position of the person from whom the information was obtained.'" National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 677-78 (D.C. Cir. 1976) (quoting National Parks & Conservation Ass'n v. Morton, 498 F.2d 765-70 (D.C. Cir. 1974)); Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510-11 (D. Kansas 1984).

II. ACCESS TO ASIANA'S CONFIDENTIAL AND PROPRIETARY DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS

Due to the nature of the documents Asiana has filed, Rule 12 access should be limited to counsel and outside experts who file an affidavit stating that they will: (1) use the information only for the purpose of participating in this proceeding; and (2) not disclose the information to anyone other than counsel or outside experts who have filed a valid affidavit with the Department.

Asiana's documents filed under Rule 12 contain highly sensitive commercial information relating to international strategy, performance and planning. In order to protect Asiana's ability to compete effectively in international markets, it is imperative

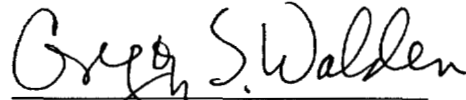
that this information not be disseminated to Asiana's competitors, even under Rule 12 procedures. In recent years, the Department has routinely limited Rule 12 access to such data filed in the course of antitrust proceedings to counsel and outside experts.² By limiting access in this manner, the Department can permit parties to fully participate in this proceeding while limiting the risk of competitive harm that would result if the information were disseminated to Asiana's competitors.

WHEREFORE, for the foregoing reasons, the Department should grant Asiana's motion to withhold from public disclosure the confidential, proprietary and commercially sensitive information that Asiana has filed under seal; limit Rule 12 access to counsel and outside experts as described above; and grant such other and further relief as the

² See, e.g., Joint Application of American Airlines, Inc. and Swiss International Air Lines Ltd. (Docket OST-02-12688), Notice Providing Access to Documents (July 10, 2002); Joint Application of Delta Air Lines/Air France/Alitalia/Czech Airlines; (Docket OST-01-10429), Notice Providing Access to Documents (August 21, 2001); Joint Application of United/Austrian/Lauda/Lufthansa/SAS (Docket OST-00-7828), Notice Granting Access to Confidential Documents (September 15, 2000); Joint Application of American Airlines, Inc. and the TACA Group (Docket OST-00-7088), Notice Granting Access to Confidential Documents (April 7, 2000); Joint Application of Alitalia-Linee Aeree Italiane-S.p.A., KLM Royal Dutch Airlines and Northwest Airlines, Inc. (Docket OST-1999-5674), *Scheduling Notice and Initial Determination on Motion for Confidential Treatment Under 14 C.F.R. 302.39* (July 19, 1999); and Joint Application of United Air Lines, Inc. and Air Canada (Docket OST-96-1434), Notice Granting Access to Documents (July 11, 1997).

Department deems necessary.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gregory S. Walden". The signature is written in dark ink and is positioned above a horizontal line.

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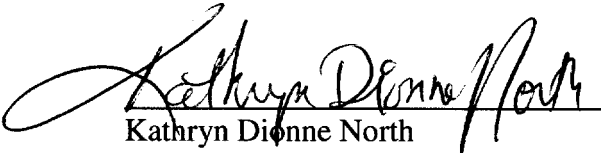
Dated: January 3, 2003

Exhibit A**INDEX OF ASIANA CONFIDENTIAL DOCUMENTS**

BATES RANGE	DATE	DESCRIPTION	RESPONSIVE TO DOCUMENT PRODUCTION REQUEST ITEM
OZ000001-OZ000012	August 23, 2001	Branch Manager Meeting Materials: San Francisco Regional Sales Office	2
OZ000013-OZ000028	August 23, 2001	Branch Manager Meeting Materials: Seattle Regional Sales Office	2
OZ000029-OZ000043	August 23, 2001	Branch Manager Meeting Materials: Chicago Regional Sales Office	2
OZ000044-OZ000087	August 23, 2001	Branch Manager Meeting Materials: New York Regional Sales Office	2
OZ000088-OZ000118	August 23, 2001	Branch Manager Meeting Materials: Los Angeles Regional Sales Office	2
OZ000119-OZ000166	August 23, 2001	Branch Manager Meeting Materials: East/South East Asia Team	2
OZ000167-OZ000212	March 29, 2002	Branch Manager Meeting Materials	2
OZ000213-OZ000238	March 29, 2002	Branch Manager Meeting Materials: Los Angeles Regional Sales Office	2
OZ000239-OZ000252	March 29, 2002	Branch Manager Meeting Materials: New York Regional Sales Office	2
OZ000253-OZ000274	March 29, 2002	Branch Manager Meeting Materials: San Francisco Regional Sales Office	2
OZ000275-OZ000290	March 29, 2002	Branch Manager Meeting Materials: Seattle Regional Sales Office	2
OZ000291-OZ000300	March 29, 2002	Branch Manager Meeting Materials: Chicago Regional Sales Office	2
OZ000301-OZ000302	July 2002	Present Interline Status of U.S. Carriers	1,2
OZ000303-OZ000345	July 24, 2002	OZ and UA Meeting Agenda and Materials	1,2

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a copy of the foregoing Motion Of Asiana Airlines, Inc. For Confidential Treatment Under 14 C.F.R. § 302.12 upon all persons listed on the attached Service List by causing a copy to be sent via U.S. first-class mail, postage prepaid.


Kathryn Dionne North

DATED: January 3, 2003

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